

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

PTP ONECLICK, LLC,

Plaintiff,

v.

AVALARA, INC.,

Defendant.

Case No. 1:18-cv-01671-WCG

**DECLARATION OF MARSHAL KUSHNIRUK IN SUPPORT OF AVALARA'S  
MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)**

I, Marshal Kushniruk, hereby declare as follows:

1. I have been working at Avalara, Inc. ("Avalara") since it was founded in 2004, and I am currently Avalara's Executive Vice President for Global Product and Business Development. I currently work out of Avalara's Seattle, Washington headquarters. I am a resident of Bainbridge Island, Washington (a 30-minute ferry ride from Seattle).

2. As Avalara's Executive Vice President for Global Product and Business Development, I lead product and business development for Avalara's suite of cloud-based solutions for tax compliance and automation. In general terms, my responsibilities include interfacing with our major customers and planning future product features. My previous roles at Avalara also involved business development and strategic product planning.

3. Based on my experience with the company, I have general knowledge of Avalara's products, product history, business structure and operations, as well as the historical and current processes by which Avalara designed, developed, and marketed its AvaTax, Avalara

Returns, and Avalara TrustFile products. If called to testify regarding the facts set forth in this Declaration, I could and would testify competently thereto.

4. Avalara is a Washington corporation with its headquarters and principal place of business at 255 S. King Street, Suite 1800, Seattle, King County, Washington 98140. Prior to February 2018, Avalara's headquarters and principal place of business was located on Bainbridge Island, Kitsap County, Washington. Avalara's Washington headquarters, whether on Bainbridge Island or in Seattle, has always comprised its strategic center. Avalara employs 457 employees in its Seattle office, including engineers, product managers, marketing and sales professionals, customer support staff, and executives. Seven additional Avalara employees work remotely in Western Washington. Virtually all of these employees work directly, or at least indirectly on the AvaTax, Avalara Returns, and/or Avalara TrustFile products.

5. I understand that Plaintiff claims that Avalara's AvaTax, Avalara Returns, and Avalara TrustFile products infringe Plaintiff's asserted patent, U.S. Patent No. 9,760,915, and that Avalara misappropriated Plaintiff's trade secrets and confidential information. I further understand that Plaintiff alleges that he signed a Confidentiality Agreement with Avalara on August 1, 2011, and subsequently disclosed certain information to Avalara at and following an August 2, 2011 meeting at Avalara's Washington headquarters.

6. I further understand that Plaintiff alleges that he met in person with Rory Rawlings, Dave Weber, and myself at the August 2, 2011 meeting. Although I have no present recollection of having attended that meeting, I have personal knowledge of, and expect to testify regarding, related events prior to and following that meeting. As I explained above, I work out of Avalara's Seattle headquarters. Rory Rawlings and Dave Weber are no longer employees of Avalara, but both Mr. Rawlings and Mr. Weber currently reside in the Seattle area.

7. I am also signatory on behalf of Avalara to the Confidentiality Agreement that Plaintiff attached as Exhibit 2 to his Complaint. I have personal knowledge of, and can testify regarding, the circumstances surrounding the signing of that Agreement.

8. I further understand that Plaintiff alleges that at the August 2, 2011 meeting, he also met in person with an individual named Brooke Walker, who he identifies as an Avalara co-founder. I have no recollection of any such individual at the meeting in question, nor am I familiar with anyone by that name having worked at or been associated with Avalara. Avalara has no record of any co-founder or employee by that name.

9. Based on a preliminary investigation, I understand that three other then-Avalara employees were involved in or around August 2011 with respect to the allegations in his Complaint: Lloyd Geggatt, Luis Saenz, and Robert (Tres) Heffron. Mr. Geggatt held the title of Business Analyst, Mr. Saenz was Director of Development, and Mr. Heffron was Director of Program Management; and they each are likely to have attended the August 2011 meeting with Plaintiff. None of these individuals are current Avalara employees. Mr. Heffron currently resides in the Seattle area. I understand that Mr. Geggatt lives in Kilauea, Hawaii, and Mr. Saenz lives in San Diego, California.

10. Avalara has designed, developed, managed, marketed and sold AvaTax, Avalara Returns, and Avalara TrustFile products primarily out of Avalara's Seattle-area headquarters for the last 14 years. All material decisions regarding these products are made at Avalara's headquarters.

11. Based on their knowledge of and experience with the design and development of the AvaTax, Avalara Returns, and Avalara TrustFile products, I would expect my colleagues Mark Withers and Mark Wilhelm to testify in this litigation. Mr. Withers is a senior software

developer at Avalara and has worked with the company, including periods as its Director of Software Development, since 2004. Mr. Wilhelm is the Director of Partner Launch at Avalara and has worked at the company since 2005. Mr. Withers and Mr. Wilhelm have both worked on the accused products since 2005 and are knowledgeable about the design process for the accused products, the relevant prior art in field at the time of development, how the products were developed and how they evolved, the past and present operation and functionality of the accused products, and technical details about the accused features of these products. Mr. Withers and Mr. Wilhelm both work in Avalara's Seattle headquarters and reside in the Seattle area.

12. I would also expect my colleagues Tracy Barney and Rae Winn to testify in this litigation. Ms. Barney is Director of Quality Assurance at Avalara and has worked at the company since 2005. Ms. Winn has been a Senior Quality Assurance Engineer for Avalara since May 2007. Ms. Barney and Ms. Winn have both worked in product testing for the AvaTax, Avalara Returns, and Avalara TrustFile products and are well versed in the past and present operation and functionality of the accused products, and technical details about the accused features of these products. Ms. Barney and Ms. Winn both work in Avalara's Seattle headquarters and reside in the Seattle area.

13. I would also expect my colleagues Andrea Anderson and Mark Giddens to testify in this litigation. Ms. Anderson has been the Senior Vice President of Customer Loyalty at Avalara since October 2008, and prior to that, she was the Director of Marketing for Avalara. Mr. Giddens is a Manager of Pre-Sales Support at Avalara and has worked at the company since 2004. Ms. Anderson and Mr. Giddens are familiar with the AvaTax, Avalara Returns, and Avalara TrustFile products from a marketing and sales perspective and are knowledgeable about how the accused products were promoted and sold to customers. They also have general

knowledge about how the accused products were developed and how they evolved, and the past and present operation and functionality of the accused products. Ms. Anderson and Mr. Giddens work in Avalara's Seattle headquarters and reside in the Seattle area.

14. Because Avalara's strategic center is at its Seattle headquarters, Avalara's documents related to the design, development, operation, maintenance, marketing, and financial performance of the AvaTax, Avalara Returns, and Avalara TrustFile products are most easily accessible in Seattle. For example, Avalara's network drive for the storage of Avalara product- and business-related data is located in Seattle. Since 2004, Avalara has also maintained a SharePoint Server installed locally within Avalara's IT infrastructure in Seattle, which its product developers use for collaboration, document management, and data storage. Avalara also has source code repositories containing past and present code for the accused products. Those source code repositories are located in and controlled from Seattle.

15. Avalara has also located several dozen binders containing hard-copy documents and materials relevant to Avalara's finances and financial history for a portion of the time period for which Plaintiff alleges he is entitled to damages. These binders are currently stored at the offices of Avalara's outside counsel in Seattle, Washington.

16. Avalara employs 39 people in its Green Bay office and two people who work remotely throughout Wisconsin. Avalara opened its Green Bay office in 2014 following Avalara's acquisition of the Zytax line of energy excise tax-related products from FuelQuest, a Houston-based company. That company's Wisconsin employees then joined Avalara as part of the acquisition and continue to work on the Zytax Determination product. The Wisconsin employees were not part of Avalara in August 2011 or in the years following. Today, the Wisconsin employees continue to focus on the product they brought to Avalara—a separate

energy excise tax product—not on any of the legacy products Plaintiff identifies in his allegations.

17. I am not aware of any potential witnesses or evidence relevant to this litigation located in the Eastern District of Wisconsin.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief, formed after reasonable inquiry under the circumstances.

Executed this 6th day of November, 2018, in Seattle, Washington.

A handwritten signature in black ink, appearing to read "Marshal Kushniruk", written in a cursive style.

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Marshal Kushniruk